

<p>CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795</p>	<p>Hearing Date/Agenda Number P.C. 3/27/02 Item 3.b</p>			
<h1 style="margin: 0;">STAFF REPORT</h1>	<p>File Number CP02-009</p>			
	<p>Application Type Conditional Use Permit</p>			
	<p>Council District 3</p>			
	<p>Planning Area Central</p>			
	<p>Assessor's Parcel Number(s) 259-38-131</p>			
<p>PROJECT DESCRIPTION Completed by: Akoni Danielsen</p>				
<p>Location: North side of San Fernando Street between Delmas Avenue and Hwy 87</p>				
<table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">Gross Acreage: 4.5</td> <td style="width: 33%;">Net Acreage: 4.5</td> <td style="width: 33%;">Net Density: N/A</td> </tr> </table>		Gross Acreage: 4.5	Net Acreage: 4.5	Net Density: N/A
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PUBLIC AGENCY COMMENTS RECEIVED

Completed by: AD

Department of Public Works, Fire Department

See Conditions of Approval

Other Departments and Agencies

See attached memorandum from the Department of Transportation, San Jose Arena Authority

GENERAL CORRESPONDENCE

None Received

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant, the San Jose Water Land Company, is requesting a Conditional Use Permit (CUP) to allow temporary circus uses on the subject 4.5-acre site, located at the east side of Delmas Avenue between Santa Clara and San Fernando Streets. The subject site was approved as a parking lot for Compaq Center events by the Planning Commission (File No. CP93-08-047) in 1993, and for temporary circus uses in 2000 (File No. CP99-09-062). The proposed CUP would authorize temporary circus use of the parking lot in the spring (April 15-June 7) and again in the fall (tentatively August-October). The spring circus is the Cheval Theatre, a circus focused on performing horses. The fall circus is the Cirque du Soleil, which used the site in 2000.

The site is surrounded by parking and the San Jose Compaq Center to the north, the SJW Land Company office building and Highway 87 to the east, detached residences to the south, and a parking lot with 400 spaces across Delmas Avenue to the west. This parking lot, which is also owned by SJW Land Company, was approved for event parking by the Planning Commission (File No. CP93-02-002). It will be available for use by circus patrons during events. Several parking lots in the vicinity of the subject site, previously approved by the Planning Commission for Compaq Center events, would also be available.

The spring circus would require approximately 53 days (second week of April to first week of June) for infrastructure set-up, performance(s), and dismantling. There will be no new buildings. Four tents, the main one being 69 feet tall and 50 feet in diameter, and several trailers would be set up on site. Security personnel, tent crew, horse crew and caretakers (approximately 17 people) would have sleeping trailers on site. Sanitary provisions would be available with hook-ups to existing sewer infrastructure.

There are 39 performances projected on 28 days, each with a capacity of 1,500. Performances would occur between 1:00 p.m. and midnight. The selection of performances are scheduled for Tuesday to Sunday at varying starting times (1:30, 4:00, 5:00, 8:00,) with no more than two performances daily. Performances typically run 2.5 hours.

The fall circus would require approximately 60 days for infrastructure set-up, performance(s), and dismantling. There will be no new buildings. Four tents, the main one being 80 feet tall and 50 feet in diameter, and several trailers would be set up on site. Only security personnel would have sleeping trailers on site. Sanitary provisions would be available with hook-ups to existing sewer infrastructure. There are 60 to 65 fall performances projected, each with a capacity of 2,500. Performances are anticipated for Tuesday to Sunday and would occur between 1:00 p.m. and midnight, with no more than two performances daily. Performances typically run 2.5 hours.

ENVIRONMENTAL REVIEW

A Negative Declaration has been adopted for a previous and essentially the same project (File No. CP97-03-012) which indicated there is no substantial evidence that the project has a significant adverse effect on the environment.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of General Commercial in that miscellaneous commercial uses are intended to be permitted.

ANALYSIS

The proposed project was analyzed for conformance with the criteria and standards established in the Zoning Code for short-term uses, pedestrian and vehicular traffic, and noise.

Zoning Code Criteria and Standards. The proposed project is consistent with the applicable criteria and standards for temporary outdoor uses of private property as follows. The site is paved, has direct access to major and secondary thoroughfares (Santa Clara Street, Delmas Avenue and San Fernando Street), and its use would not impact the parking needs of the SJW Land Company nor the Compaq Center. The main tent is more than 150 feet away from any residence, and performances would not occur before 1:00 p.m. and would end prior to midnight. The required State and County permits would be secured for food and alcoholic beverage service. Finally, the site would be returned to its normal use as a parking lot upon termination of the circus.

Parking and Pedestrian and Vehicular Traffic. The spring circus performance (Cheval Theatre) would have a capacity of 1,500 as compared to about 17,000 for typical sporting events at the Compaq Center. The proposed spring 2002 circus schedule would coincide with the National Hockey League playoffs should the San Jose Sharks qualify. The fall circus (Cirque Du Soleil) would have a capacity of 2,500, and will be evaluated by City staff, including the Arena Events Operations Committee (AEOC), for potential conflicts with fall Compaq Center events when both schedules are sufficiently defined.

Analysis performed in large part by the Department of Transportation, which coordinates Compaq Center Events operations, shows the proposed project, as conditioned, is not expected to have significant impacts on the traffic and parking levels of service in the surrounding area. Because the Department of Transportation also has the role of implementation of the "San Jose Arena Transportation and Parking Management Plan," part of their implementation includes leading the AEOC to facilitate the management of transportation and parking issues in the Compaq Center area.

The Department of Transportation on behalf of the AEOC has identified conditions to ensure that traffic and parking needs of both the Compaq Center and circus meet the management plan. These conditions have also been drafted based upon the experience gained from the previous circus events in 1997 and 2000 to ensure the safe and efficient movement of pedestrians and vehicles and effective use of available parking facilities. They address the need for additional police officers during dual-events (both large Compaq Center events and circus events occurring the same evening); the distribution of information to circus and Compaq Center patrons identifying dual-event dates, identification of those parking lots displaced by circus events, identification of those parking lots expected to have excess capacity during dual-events, and the promotion of public transit as an alternative to patrons driving. The Arena Authority, an AEOC member, has also identified measures to address traffic and parking issues with the circus to help event operations be successful.

There is potential for circus event conflict with the annual Cinco De Mayo Parade and Festival. The parade and festival, running from 9:00 AM to 6:00 PM, is anticipated to attract between 40,000 and 100,000 attendance and have a serious impact on many streets in the vicinity of the circus site. Many downtown streets will be closed and access to freeway on-ramps limited. Circus patrons would have a very difficult time coming to and leaving the site. Therefore, Department of Transportation staff and other members of the AEOC recommend the circus not hold performances on May 5. The draft CUP has been conditioned to preclude May 5th circus performances to avoid this potential conflict.

Noise. While circus performances would generate "single noise" events, which could occasionally fluctuate to around 60 decibels, on the 24-hour scale no noise would exceed 55 dBa LDN at surrounding residential boundaries as required by the General Plan.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the CN Commercial Zoning District.
3. A Negative Declaration has been adopted for a previous and essentially the same project (File No.CP97-03-012) which indicated there is no substantial evidence that the project has a significant adverse effect on the environment.
4. The proposed project is subject to the Zoning Code criteria and standards for temporary outdoor uses of private property as defined in Title 20 of the San Jose Municipal Code.
5. The circus will be performed at the subject site between April 30 and June 2, 2002.
6. The circus will include between 35-40 performances.
7. There would be no more than two performances daily between 1:00 p.m. and midnight.

8. The project site is about 4.5 gross acres.
9. Temporary structures, including four tents and several trailers, would be set up on the site.
10. The proposed project is programmed and conditioned to prevent conflicts with major Compaq Center events.
11. There are several public parking lots in the vicinity of the subject site that are expected to have sufficient capacity during large Compaq Center events and circus events occurring simultaneously.
12. The major tent is more than 150 feet from the nearest residence.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project is consistent with the criteria and standards established in the Zoning Code for short-term uses.
5. The proposed project site is adequate for this temporary use per the Zoning Code criteria.
6. The proposed project would not have significant parking and traffic impacts on the surrounding area.
7. The proposed project would not have significant adverse impacts on the single-family residences along San Fernando Avenue.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and

3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Site Development Permit.** This permit fulfills the requirement for a Site Development Permit.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "San José Water Company – "Cheval Theatre," dated February 27, 2002, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
3. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Sunday for any on-site or off-site work within 500 feet of any residential unit.
5. **Refuse and Site Cleanup.** All trash areas shall be effectively covered and maintained in an orderly state to prevent water from entering into the garbage container. The applicant shall ensure the daily cleanup and maintenance of the site and the prompt removal of refuse, as often as is warranted, during the duration of the circus.
6. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
7. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-04985) to the satisfaction of the Director of Public Works:
 - a. *Existing Sanitary Laterals.* All temporary on-site sanitary lines shall be connected to existing laterals on site.
8. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP00-009, shall be printed on all construction plans submitted to the Building Division.
9. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief. Additionally, the applicant shall obtain Fire Department approval for fire control devices, tents and canopies, cooking equipment, pyrotechnics and emergency vehicle access.
10. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
11. **Duration.** The circus can operate at the subject site between April 15 and June 7, 2002, which includes its infrastructure setup, performances and dismantling.
12. **Daily Events.** The circus can hold two performances daily between noon and midnight. Pre-performance operations are to start after 8:00 a.m. and post-performance operations are to cease prior to 1:00 a.m.

13. **Security Trailers.** On-site sleeping trailers for security personnel, tent crew, horse crew and caretakers, are only permitted during the circus operations timeframe (April 15 and June 7, 2002).
14. **ABC Licensing.** The applicant shall comply with all requirements of the State Alcohol Beverage Control Board regarding alcoholic beverage sales.
15. **County Health Department Permits.** The applicant shall comply with all requirements of the County Health Departments regarding food and beverage sales.
16. **Occupancy Limit.** The maximum occupancy of tents and trailers on the subject site shall not exceed the Fire Department's occupancy requirements.
17. **Noise Impacts.** Noise generated due to performances or other on-site activities shall not exceed 55 dBA LDN at residential property lines in the vicinity of the subject site.
18. **Sanitary.** The applicant shall provide restrooms on the site for use by circus patrons and workers. These restrooms may be connected to existing on-site sanitary laterals subsequent to approval by the Director of Public Works.
19. **On-Site Security.** The applicant shall provide on-site uniformed security personnel during the duration of the circus to the satisfaction of the Chief of Police.
20. **Site Reversion.** The applicant shall clean up and return the site to its normal state as a parking lot after the termination of the circus by recapping existing sanitary laterals, replacement, mending of perimeter fencing, etc.
21. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
22. **Police Support.** The applicant shall hire police officers, in accordance with the requirements of the Police Department's secondary employee unit permitting process, to manage traffic and pedestrian flows as follows:
 - a. A minimum of two police officers for each circus event. The two officers are required to work one hour before, through, and one hour after each event.
 - b. A third officer shall be hired when there is dual event occurring at the Compaq Center with a projected attendance level of over 9,000. The three officers will be required to work one and a half hours before, through, and one hour after each event that coincides with a large Compaq Center event (+9,000 attendance). During dual-events, the three officers hired by the applicant shall be under the authority of the lead officer in charge of managing Compaq Center traffic and will coordinate all management activities with the lead officer accordingly. The lead officer will have the authority to reassign the three support officers to other locations on an as needed basis to ensure optimum traffic control.

- c. The Department of Transportation is authorized to hire additional police traffic personnel, at the applicant's cost, should unexpected circumstances arise which adversely affect circus and Compaq Center operations. The hiring of additional officers as needed will be coordinated the Arena Events Operations Committee (AEOC).
23. **Circus Patron Notification.** The applicant and/or circus promoter shall encourage patrons to use public transit in traveling to and from the site, publicizing the easy accessibility of the site via bus routes, light rail, and Caltrain. Patrons who drive shall be encouraged to park in facilities east of Highway 87 and south of San Fernando Street that are more convenient for circus patrons than Compaq Center patrons and directed to nearby lots where known excess capacity exists. Patrons shall also be notified of dual event dates (both circus event and Compaq Center event with a projected attendance of at least 9,000). Notification shall occur through ticket sale inserts, the posting of information on the circus' Internet website, flyers, newspaper and magazine advertisements, and other feasible media. Notification shall occur in coordination with the Department of Transportation.
24. **Compaq Center Patron Notification.** The applicant and/or circus promoter shall distribute informational flyers to all Compaq Center patrons who utilize their parking facilities during the last two events occurring in April 2002, which includes at a minimum, one hockey game. The flyers will be designed by the Department of Transportation and should provide information on the dates and times during which the Water Company East lot will not be available for patron parking due to circus events. The flyers should also clearly indicate that the Water Company West lot will be available to both circus and Compaq Center patrons on a first come first served basis when dual events are scheduled. The flyer should also identify alternate parking facilities, and include an advisory warning regarding illegally parking in neighborhood permit parking areas.
25. **Circus Employee Parking.** During dual events, employees are required to park in facilities east of Highway 87 and south of San Fernando Street.
26. **Parking Diversion Signage.** The applicant shall furnish the Department of Transportation a minimum of eight static portable signs to facilitate diversion of event patrons from Water Company East lot to alternate parking facilities. The signs' design specifications shall be determined by the Department of Transportation.
27. **Event Coordination.** The applicant and/or circus promoter shall confer on an as needed basis with Department of Transportation, Police Department, Arena Authority, and Compaq Center Management staff to review and address issues that may arise from the management of dual events.
28. **Cinco De Mayo.** To avoid potential conflicts with the San Jose Cinco De Mayo Parade and Festival, no circus performances are permitted on May 5th, 2002.
29. **Circus Event Provisions.** The property owner and/or circus promoter shall make provisions for each of the following:
 - a. refuse disposal and sufficient trash receptacles within the event site;
 - b. litter removal within a 300 foot radius of the boundaries of the event site. The applicant shall be responsible for reimbursing the City for the direct cost of litter removal within the 300 foot radius in the event the applicant fails to comply with this requirement;

- c. scheduled maintenance of the venue during the course of the event, including removal of animal waste;
 - d. sanitary facilities, including adequate restrooms and/or portable toilets.
30. **Property Owner Notification.** The applicant shall provide written notification of the circus performance schedule, including time, date and description of the activities to property owners within 300 feet of the site at least 14 days in advance of the first day of the event.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire one year from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such one-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit was approved by the Planning Commission.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.
3. **Time Limit.** This Conditional Use Permit expires and has no further force or effect five years from the date of this Permit. Please note that this conditional use permit has been granted for a period of 5 year(s) only. you are being specifically and separately advised of this time limitation so that you will consider this time limitation in your decision to accept this permit or as you make any investment decision related to this property. This Permit explicitly permits the proposed circus event schedule from April 30 through June 2, 2002, with a week setup preceding and a week dismantling period following the performance schedule. Subsequent circus event schedules, including the fall Cirque Du Soleil circus schedule, may be permitted in the following years covered by this Permit with a Permit Adjustment. An application for a Permit Adjustment must be filed with the Director of Planning more than 90 calendar days but less than 180 calendar days prior to the proposed event schedule. The Director of Planning must conclude, in consultation with the Department of Transportation and other members of the Arena Events Operations Committee as appropriate, that the proposed event schedule does not unreasonably conflict with the expected Compaq Center schedule of events, and that the conditions of this Permit adequately address the parking and traffic needs of both Compaq Center and circus patrons. If this conclusion can not be made, or if the Permit Adjustment is not submitted in a timely manner, a new Conditional Use Permit application must be filed.

4. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180 calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.
- c: San Jose Water Land Company, 374 West Santa Clara Street, San Jose, CA 95196
Building Division (2)
Engineering Services

AD/yt/207-10